

REFLECTIONS ON HUMANISTIC TEACHING

By James R. Elkins*

A teacher's work is unique in that it is carried out in a "shared" environment. Students share the work and, in so doing, permit its existence. Teaching and learning -- teacher and student -- exist in an inexorably symbiotic environment and relationship. The first perception of reality for the law teacher, a recognition of what is, must begin with the law student. The law student is the real world for the law teacher. Student images, attitudes and demands operate as external constraints on the teaching enterprise.

The foremost claims made on a teacher are found in the expectations of students. Students create an image of law teachers patterned on other teachers and authority figures. The teacher encounters this image, and too often falls prey to it by performing the role it calls forth. The traditional law teacher's role becomes linked to student concerns with law practice-oriented courses and those courses which are "required" for practical lawyer skills. Thomas Shaffer and Robert Redmount, in a study of three midwestern law schools, conclude that "[t]he student seeks bar-related and bar-significant courses. He cannot afford to pursue legal education as an adventure in learning, and an opportunity for self-learning because there appears to him to be no tangible reward or secure professional preparation in these choices."¹

One of the most difficult aspects of teaching for me is in dealing with the fact that many students feel strongly that law schools should be more practical and less theoretical, more skills-oriented and less philosophical, more rule-oriented and less concerned with social policy. Regardless of the teacher's orientations, students worry about final examinations and whether

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they have figured out what you want them to learn. My students are not an exception to this rule and are often anxious about how they will be graded.

One student in an Introduction to Law class voiced some of these concerns, asking, "What can you test us on? We don't seem to cover anything specific, but rather just get everybody's views. I can't figure out what you could ever test us on." I immediately reacted negatively, seeing the remark as yet another sign that students simply don't care about the truly significant questions which can be raised about a life in law. On further reflection, I view this initial interpretation as superficial. Maybe the only way that this student can raise dormant concerns about learning is to ask about the final examination. Since my classes are relatively informal and unstructured, and I am always available to talk with students, it is easy to convince myself that the truly concerned student would have voiced concern about what actually goes on in the class as opposed to the criteria for grading. What I am suggesting, however, is that the question about the test can be viewed as a vehicle for a discussion about teaching.²

I am presently trying to use such discussions to learn about my teaching, and the way it both promotes and obstructs student learning. During the course of such discussions with first-year students in two sections of an Introduction to Law course, and 2nd and 3rd year students in Professional Responsibility, a number of themes begin to emerge. Student concerns seem to focus on two points:

1. "The class seems to be too subjective. Everybody has a different idea and most of them really seem to be off the wall."
2. "It's hard to get anything concrete out of the course where students do so much of the talking."

Similar complaints have been voiced by my students in the past. The criticism ranges from the student who feels that I don't earn my money as a teacher (and/or that I'm incompetent) to the student who is intrigued by

my teaching but nevertheless wonders whether one can really learn from listening to other students talk. I am now trying to understand these complaints so that they can be explored directly with students both in and out of the classroom.

Students enter my class with certain images of me as a teacher and expectations about what will happen in the classroom. Students generally expect me to transmit information -- to tell them what the law is and how lawyers use it. My students assume that I have acquired a storehouse of factual data and theories about law, and that I am being paid to provide that information to them and to encourage (by various means) their assimilation of this information.

Any image of the teacher carries with it certain expectations about what the teacher does and should do. The teacher will sit in the front of the room on the appointed day and hour and talk--presenting the information. The "good teacher" may even ask a few questions or (more rarely) open the floor to questions from the students. The clear emphasis is on information--on answers and not on questions. Students do not expect a good teacher to continually ask questions. One of my students once explained to me that the reason everyone in my class was so quiet and passive was that I asked questions they couldn't answer. I asked him what he would recommend that I do about this and he replied, "Try to ask questions that we can answer. It will help move the class along."

Students with these expectations have rigidly defined teacher and student scripts and fully expect that "good" teachers will follow the script. In a sense, students come to see classroom teaching as a kind of ritualistic encounter or drama where each of the participants enacts clearly defined roles. Whenever the teacher or student steps out of the prescribed role, students become anxious and ask "Should we be doing this?" "Am I learning anything?" Students willingly admit that their undergraduate learning environments inadequately prepare them to actively participate in the learning. They expect that they will be allowed to sit passively and take notes and study for exam-

inations (those attempts at regurgitating "what the teacher wants them to say.") Today's students spend more time figuring out what teachers want them to say than seeking what it is they need to learn.

I have tried, in a variety of ways, to explore with my students the expectations and images that we bring with us to the classroom. These discussions are premised on the belief that legal education itself should be subjected to scrutiny within the classroom. To ignore the personal, social and institutional aspects of the law school as a learning environment is to ignore the major period of transformation from layman to lawyer. One method that I have used to explore the range of student perceptions of what is going on in the classroom is to begin the course by trying to deal explicitly with the way student-teacher interaction is structured. The goal is to work with the "hidden agenda" that I teach from and that which students bring with them. For example, to experiment with the idea of hidden agenda, I initiated on the first day of an Introduction to Law class a discussion about the rules which govern in a classroom. I began by setting out the explicit rules for the course. I then asked the class whether there were other rules, i.e., implicit, unstated rules which were governing our interaction. Students responded that we seemed to be following rules that:

- 1) one person speak at a time,
- 2) students would sit in chairs, if chairs were available,
- 3) I would stand in front of the group,
- 4) I would talk and they would listen.

I asked the class whether they wanted to operate by these implicit rules. Silence. I asked again, "Do you want to operate by these rules? Let's begin with the first one." A student responded that there should be exceptions to the rule. For example, someone might want to say something spontaneously, or out of excitement. I related this exception to the rule of res gestae in evidence and pointed out that statements made under such

an exception might indeed be important.

I asked the same question again. A student responded that rules are important and that lawyers have to live by rules. This student thought one should get used to rules by having them in legal education. I interpreted this for the class that the speaker wanted rules. He agreed. I asked again whether the class wanted to have a rule about one person speaking at a time. One student noted that no rule was necessary. He couldn't understand why we were talking about it. If we ever needed a rule about order of speaking, he thought that a class of "reasonably prudent persons" could decide the issue when it came up.

Then a student suggested that to determine the rules, one needed to know what game was being played. I observed that indeed rules were commonly associated with games and that games do have rules. Moreover, one could view legal education as a game. I asked what the danger would be in determining the game prior to discussing the rules. There was no immediate response. After a discussion of the relationship of games and rules, another student and I agreed that conceiving law school as a game could have a direct affect on both law school and the person who held such a conception. I noted in closing the discussion on this point that by admitting that law school was a game with pre-established rules, the student would in essence be giving up responsibility for using legal education for his own purposes but rather would simply accept whatever was provided.

There followed a discussion of this class vis-a-vis other classes. A student noted that implicit rules were not being discussed in other classes. I inquired whether it was important for us to be doing what we were doing.

The group was uneasy when confronted with the choice of whether to proceed with the implicit rules. There was a resistance to choosing which of the implicit rules would be followed. In exploring the resistance, someone pointed out that I made the rules and that only I was empowered to do so. I

agreed as to the explicit rules that I had set forth for the class in writing. But I noted that the rules under discussion were implicit rules and had been adopted, for the most part, without regard to my authority.

I was instructive for me to discuss the rules we follow in the classroom. I learned that students' personal and philosophical orientation to rules varies widely. There was a clean split between those who "felt" a need for rules to structure the class and those who argued that we should proceed to make up the rules as we went along. A few found the chaos of an unstructured class appealing. Some students seemed unable to figure out how a discussion of classroom rules was relevant to learning law; for others, the question was one of authority to make rules; still others were unable to choose their own rules in the absence of authoritative imposition.

In a second class, I raised the authority issue in a different context. I suggested to the class that how we feel about what we are doing is a component of our learning. I proposed that from time to time "as appropriate," and without giving up our goal of talking about the problems of legal method, we deal with the feelings in the classroom. A woman student to my right was smiling and nodding her head. The class seemed to agree that this would be a good way to proceed. I "seemed to agree" since I did not seek to establish that a consensus existed before proceeding. The issue, as one student put it, was whether to vote on the issue. For example, should the class vote about whether they wanted to continue the rule that only one person speak at a time? Was the class to be conducted on the basis of majority vote? How would I deal with the suggestion that a vote be taken? Was this suggestion derived from the view that the group adopt democratic principles and that group conflict be settled by voting?

These classes raised more issues than I can address here. While the concerns for authority, rule, and structure are obvious, the more intriguing question for me is really one of method. How can I as a teacher use the

kind of dialogue that I have described? What purpose does it serve and how can students learn from the subjective responses of other students?

After such a class, students seem to feel that while it may have been enjoyable, it could not be the basis for learning anything since students simply presented their own views about rules and teaching. How can one learn from anything so subjective? Finally, my students are confused by my failure to evaluate student comments in class. Students seem to feel that statements should be evaluated--and that the failure to do so leaves them with a mass of subjective statements.

I am concerned with what students can learn from raising these kinds of questions. The perennial questions that follow me are: How do I teach and is it effective? Do my students learn and if so, is it a result of my teaching or in spite of it? What can I say as a teacher about what should be taught? Is there "something" that should be taught?

How can I, as a teacher, respond to complaints that so-called humanistic teaching is "just talking" and that "any and everything is talked about" and that everything is too "subjective"? Many students feel that it is too hard to learn from such a method. On the other hand, many students suggest that this approach to teaching is worthwhile. They feel that classes in which these issues are raised

--are more exciting than traditional courses.

--require them to think more.

--place on them more responsibility to understand the material.

--allow them to develop their own understanding of the material.

One way I can deal with student concerns is to evaluate them in the context of what I do or try to do in class. This is my first effort at trying to write about my teaching methods and goals. In the following comments, I will describe the way I use a humanistic approach to teach substantive materials.

The class which I describe here dealt with the issue of "authority" of statutes

and whether judges were bound to follow statutes. The authors of the text book [W. Bishin and C. Stone, Law, Language, and Ethics] had shown in series of cases that judges often have no "law" to apply. In those cases students were asked to reflect on the source of "law" and to begin to consider the range of cases in which judicial discretion might be a necessary part of the legal system. In other assignments, I asked students to consider other possible sources of "authority" in reaching legal decisions: the "facts," the "issue," and the "language" in which a dispute is framed. For the hour in question, I assigned a series of cases in which the courts turned to statutes for authority. The question in each of the cases was whether the statute could and should be applied and how the court justified the decision.

To teach the material, I could have lectured on the theories of statutory construction using the assigned cases as illustrative material. This approach would have allowed students to take voluminous notes and many would have felt secure that they had learned statutory construction. I took, instead, a different approach. Students were not required to take each of the cases and explicate what the court was doing in the case and critique its rationale. Rather, the emphasis in class was on the way the student responded to the problem presented to the judge. For example, in one case the question was whether the theft of an aircraft was covered by a criminal statute applicable to "motor vehicles." The case was included to show the difficulty in applying statutes framed in seemingly specific, concrete terms.

I asked: Does the term "motor vehicles" include aircraft? A student replied that it did not. I asked: Is that your view or that of the court? He replied, "the court's." I asked how the court reached that decision. The class then explored how a particular term in a statute can be interpreted. The emphasis at first was on giving statutory language its common meaning. But what is its common meaning? One student pointed out that the legislature is a part of the larger society and when it speaks it makes an

effort to do so in language that everybody understands. Therefore, the common meaning of the language is reflected in the way the legislature uses the language. A question was then raised about the source of the legislative language. Who actually drafts the statute, the legislature itself? We discussed the problems in the expectation that "common meaning" can be found in the work of the legislature.

In another of the assigned cases, the court recognized the legislature's intent to achieve a particular purpose but ignored this intent where the language of the statute was clearly contrary to it. Now the students were faced with a dilemma. The theory accepted by the class did not hold for all cases. Maybe there was some "authority" in the language itself which guided the court to a particular result. I then introduced the "plain meaning" rule to the class, presenting it as a statement of the courts that they are bound by the language of the statute--a statement in which the court eschews discretion and the authority to make a choice. I now asked: Have we finally found an area where the court has no discretion? Is the court bound by the plain meaning of the statute? Is the judge being more objective if he invokes the plain meaning rule than if he follows a contextual approach?

What I seek to do is to move students to recognize that their "subjective" views involve a particular philosophy or theoretical position. The first task is to have students accept the view that their statements have value and are useful, even if they are not fully thought out, or fully comprehensible.

In a knowing concerned as awareness, the concern is not with "discovering" a truth about a social world regarded as external to the knower, but with seeking truth as growing out of the knower's encounter with the world and his effort to order his experience of it.³

How can we move from the subjective statements of students--statements which present an inaccurate view, an incomplete view, an uninformed view--to a dialogue in class in which learning takes place? The subjective view of the student can be useful when we examine it in the context not of how

true the statement is, but whether it is a statement that can help in carrying on a dialogue on the subject. The student begins with a subjective statement. The teacher asks for a clarification or further statement so that certain themes begin to emerge. Then the teacher asks the student to reflect on the themes of the dialogue, not the correctness of particular statements.

Obviously, I am struggling to find ways to use the student's subjective view as the basis for classroom teaching. It is a difficult task and unless we find the means to demonstrate to our students the validity of the approach, the task of the humanistic teacher will be extremely difficult. Our students will continue to complain and many will find the humanistic approach a greater barrier to understanding than the existing traditional approaches.

I have been unable to adopt lecturing or a traditional Socratic approach for my own teaching. I have not been content, as would a "traditional" teacher, to teach from collected appellate decisions, either by lecturing on the legal rules reflected in the opinions, or by forcing students to discover painfully for themselves the legal structure by the so-called Socratic method. The concise, well organized, thoroughly researched, and competently presented lecture can be used as a vehicle to reflect the creative work of a scholar-teacher. On the other hand, it can be a facade for incompetence. A lecture can hardly be justified if the information is readily available in written sources. The lecture is often simply a means for silencing students and maintaining control in the classroom. The typical lecturer shares little of his total person with students and often preserves a strict compartmentalization of classroom teaching, scholarship, and private life.

To the extent that lecturing and traditional Socratic dialogue focus attention exclusively on the substantive content of the course, the effect of the teacher and his values is ignored. Where the traditional law teacher

seeks to segregate his life experience, personal biography, and personality from teaching, the humanistic teacher "tries to explore, expand, and transform these personal dimensions through his work."⁴

I have come to see and attempted to integrate student expectations, feelings, and non-verbal communications into my teaching. In my view, student motivations, feelings, and lawyer-oriented fantasies are "facts" which can be made a part of the educational process and they are becoming a very real and integral part of all my courses. Thus, the real problem is not in finding a way to "profess" in the absence of student motivations and values but to use these new "facts" to inform, enlighten, and strengthen teaching skills. Rather than lose oneself in the knowledge we have to teach, the teacher's pursuit of knowledge must be broadened to integrate the whole student into the learning.

This view does not require the teacher to abdicate responsibilities to teach a subject or body of knowledge or to promote emotion over intellect as a base value. The teacher who becomes a slave to the emotional whims of students is no better a teacher than the incompetent lecturer. "[I]t is true that emotions and fantasies obstruct learning when they are uncontrolled. Uncontrolled emotions and fantasies obstruct almost all aspects of learning."⁵ As a caveat, let me add that I have not intended a wholesale assault on cognitive learning, nor do I desire by these remarks to undermine the tradition of pushing law students toward intellectual excellence.

My explorations in humanistic teaching have moved me to reconsider the ways that teacher and student interact and the possibility of redefining their roles and scripts. I have come to agree with Paul Savoy that "[t]he classroom is not just a place where students and teachers meet periodically."⁶ For me the complexity is so rich that I often wonder how to deal with those special hours that I spend in the classroom. How can I structure them so that students can learn from our social interaction as well as the information I transmit to them? How can I use the group as a whole to further the experience of

learning? In the process of wrestling with these questions, I have formulated a number of assumptions that underlie my approach to classroom teaching. Besides those concerns I have expressed throughout, I set forth the following as beliefs that influence my interaction with students:

1. The ultimate responsibility for learning lies with the student and not with the teacher. Learning as an act of discovery is destroyed when students are simply provided answers.
2. Teaching which seeks to convey answers masks the uncertainty which lies at the core of all intellectual disciplines, especially law.
3. Answers (information) may be necessary for the rite de passage from lay person to professional and for the performance of certain professional skills, but an information approach to learning ignores the ideology implicit in our learning.
4. Teaching which emphasizes factual knowledge stifles ideals by overly emphasizing the real--which is seen as the existing storehouse of knowledge and the accepted way of doing things.

I wholeheartedly agree with Savoy that the "education medium is the real teaching message" and that students "learn more about power, authority, justice, democratic living, freedom, aggression, and intimacy" from their social interactions in law school than from the substantive law that they read.⁷ Some parts of the message may be relatively easy to analyze. For example, look at the analogy between the student-teacher relationship and attorney-client relationship. By dealing with emotions, feelings, and personal experiences of students in the classroom it may be possible to draw attention to the humanistic aspects of lawyering in the attorney-client relationship. Andrew Watson has suggested that during class discussion of cases, students often suffer "strange responses" or answers which reflect evidence of idealism, doubts, antagonisms, fear, anxiety, shyness, and other strong feelings.

Rather than implying that these expressions are evidence of unlaywerly emotionalism, students could be encouraged to understand how and why such feelings exist and learn to expect their presence. They could be routinely scrutinized along with the facts, the law, and considerations of procedure and policy....⁸

Students' expectations and images work to influence learning in much the same fashion as client expectations intrude into lawyering.

When I introduced this idea to my students, the response was enthusiastic and indicated that they could relate their feelings in the classroom to those with which lawyers dealt in client relations. One student who had worked in a law office said that the lawyers she knew were constantly dealing with emotional clients and clients with emotional problems. To be a good lawyer, she suggested, one has to learn to deal with feelings. Another student noted that not dealing with feelings is one way of dealing with them.

It may be more difficult to show students how the suppression of feelings in a relationship presents a moral dilemma. This problem is suggested by Richard Wasserstrom in noting an apparent paradox in the way lawyers serve the interest of the client and yet fail to view the client as a whole person.⁹ This paradox is present in legal education. Teachers devote much of their time and professional energy to students and yet ignore them as real and whole persons. In both attorney-client and teacher-student relationships, there exists a fundamental inequality. The relationship of inequality is a problem for both professionalism and for learning. The inequality in both instances is purportedly based in the difference in knowledge and/or skill and on the ability to use a technical language. Wasserstrom accepts the inevitability of inequality in attorney-client relationships but is critical of the manipulation and paternalism which the inequality fosters. Wasserstrom argues that the failure to treat the client (student) with respect and as a whole person presents a morally defective human relationship.¹⁰

I have used the way that I treat students and the way attorneys treat clients as one possible moral dilemma that the student/lawyer must face. I try to encourage students to consider the broader dimensions of moral dilemmas for the lawyer by asking: What is a moral dilemma? How is the resolution of such dilemmas affected by "authority" and the need to conform? In what ways

do we give up our freedom to make moral choices? Why do we do so? How do particular roles create criteria for moral judgment?

After raising these broad questions, I seek to explore the moral dilemmas in the role of the lawyer. The central questions are, first, whether lawyers live in a "simplified moral universe"; and, concurrently, whether the role as lawyers should permit those lawyer-like things we do in the name of the adversary system? Where can the lawyer turn for guidance in resolving moral dilemmas? In discussing the nature of moral dilemmas and the problems raised by the role lawyers play, I encourage students to consider the moral dilemmas in their own lives, in particular their lives as students. I ask students to identify these dilemmas and to consider the following:

If you do not find any, is it possible that the dilemmas exist but are simply unrecognized?

How does your role as student affect your approach to this dilemma?

If your role as a student is not helpful, to what role do you resort?

Is the role you use to make a decision determinative of the outcome?

CONCLUSION

In these comments there is little suggestion as to what it means to be a "good teacher" nor how to master the art of teaching. I suspect that the distinction between teaching and learning is a false dichotomy. There is a "student" in the teacher and a "teacher" in the student. The "student" of a teacher has a need to learn, to understand, and to order knowledge. The teacher dies (a metaphorical death) when the student no longer inhabits his work. The "teacher" in the student expresses the sense of "doing it myself." The student becomes "teacher" when learning is an act of self-discovery.

My goal is to become, as fully as possible, a student -- a student of those who seek to learn and those who do not, those who believe in my teaching and those who do not. My teaching depends heavily on being a student of my own teaching. In teaching, I have sought to understand the nature of law

and the special place that the lawyer takes in the world. Some of this understanding can be shared with students; often it cannot. At times I can do little more than suggest that the study of law and being a lawyer have an awesome effect on our lives. My goal is to make a place in legal education for teaching and learning that focuses on the experience of becoming and being a lawyer.

NOTES

1. T. Shaffer and R. Redmount, Lawyers, Law Students, and People 20 (1977).
2. See Richardson, "Harnessing the Emotional Forces in the Group," in Group Relations Reader 215-223 (A. Coleman and H. Bexton eds. 1975).
3. A. Gouldner, "Toward a Reflexive Sociology," in Humanistic Society 171-175 (J. Glass and J. Stande eds. 1972).
4. Stein, "On the Limits of Professional Thought," in ibid, 164-165.
5. R. Jones, Fantasy and Feeling in Education 25 (Harper Colophon ed. 1970).
6. P. Savoy, "Toward a New Politics of Legal Education," 79 Yale L. J. 444, 480 (1970).
7. Id. at 480-481.
8. Watson, "Some Psychological Aspects of Teaching Professional Responsibility," 16 J. Leg. Ed. 1, 16-17 (1963).
9. Wasserstrom, "Lawyers as Professionals: Some Moral Issues," 5 Human Rights 2-16 (1975).
10. Id. at 19.

Battleship Of Maine

Spanish-American W.
-1898-



Mc - Kin - ley called for vol - un - teers, Then I got my gun, First



Span - iard I saw com - ing I dropped my gun and run, It was



all a - bout... that Bat - tle - ship of Maine. At war with that great na - tion



Spain, When I get back from Spain I want to



hon - or my name, It was all a - bout... that Bat - tle - ship of Maine.

Why are you running,
Are you afraid to die,
The reason that I'm running
Is because I cannot fly...

The blood was a-running
And I was running too,
I give my feet good exercise,
I had nothing else to do...

When they were a-chasing me,
I fell down on my knees,
First thing I cast my eyes upon
Was a great big pot of peas.

The peas they was greasy,
The meat it was fat,
The boys was fighting Spaniards
While I was fighting that...